

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

<b>DAVID B. MERRITT, M.D.,</b>	)	<b>Civil Action No.:</b>
	)	
<b>Plaintiff,</b>	)	<b>Section:</b>
	)	
<b>vs.</b>	)	
	)	<b>Mag. Div. (    )</b>
	)	
<b>BLACK RIVER MEMORIAL HOSPITAL,</b>	)	
<b>INC.,</b>	)	
<b>Defendant.</b>	)	

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**NOTICE OF NO FILING FEE REQUIRED**

COMES NOW, Plaintiff, **DAVID B. MERRITT, M.D.**, through undersigned counsel, and files the instant Notice of No Filing Fee Required as follows:

1.

In enacting the Uniformed Services Employment and Reemployment Rights Act of 1994, Congress set out its purposes and sense of Congress. The statute holds:

(a.) The purposes of this chapter [38 U.S.C. §§ 4301, et seq.] are - -

- (1.) to encourage noncareer service in the Uniformed Services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
- (2.) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and
- (3.) to prohibit discrimination against persons because of their service in the uniformed services.

(See 38 U.S.C. § 4301).

2.

Section 4331 of USERRA authorizes the Secretary of Labor (in consultation with the Secretary of Defense) to prescribe regulations implementing the law as it applies to States, local governments, and private employers. (*See* 38 U.S.C. § 4331(a)). The Secretary of Labor, pursuant to the statutory authority found in 38 U.S.C. § 4331(a) has published Final Rules on the Uniformed Services Employment and Reemployment Rights Act of 1994 on December 19, 2005, which had the effect of law on January 18, 2006. In its Final Rules, the Secretary of Labor held:

No fees or court costs may be charged or taxed against an individual if he or she is claiming rights under the Act [38 U.S.C. § 4301, et seq.] If the individual obtains private counsel for any action or proceeding to enforce a provision of the Act, [38 U.S.C. § 4301, et seq.], and prevails, the court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

(*See* 20 C.F.R. § 1002.310; Federal Register, Vol. 70, No. 242/Monday, December 19, 2005/Rules and Regulations; (38 U.S.C. § 4323(h)(1)).

3.

Unambiguously provided for by statute in 1994 (38 U.S.C. § 4323(h)(1), and unambiguously supported and explained by the Secretary of Labor in its Final Rules on USERRA as required by Congress through the statutory authority of USERRA at 38 U.S.C. § 4331(a), and for the purposes and sense of Congress in creating the law, no court costs or filing fees are due when a Plaintiff, such as the one at bar, David B. Merritt, M.D., files suit to enforce the provisions of USERRA.

Dated this 30<sup>th</sup> day of December, 2010.

Respectfully Submitted,

/s/George C Aucoin

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